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**Introduced by Senator Dunn**

February 9, 2006

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An act to amend Section 437c of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

SB 1274, as introduced, Dunn. Civil actions: summary judgment

Existing law sets forth the conditions and requirements for filing a motion for summary judgment, as specified. Existing law requires that notice of a motion for summary judgment and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing. Existing law permits a party to move for summary adjudication of one or more causes of action, affirmation defenses, claims for damages, or issues of duty.

This bill would make technical, nonsubstantive changes in these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 437c of the Code of Civil Procedure is
- 2 amended to read:
- 3 437c. (a) ~~Any~~A party may move for summary judgment in
- 4 ~~any~~ an action or proceeding if it is contended that the action has
- 5 no merit or that there is no defense to the action or proceeding.
- 6 The motion may be made at any time after 60 days have elapsed
- 7 since the general appearance in the action or proceeding of each
- 8 party against whom the motion is directed or at any earlier time
- 9 after the general appearance that the court, with or without notice

1 and upon good cause shown, may direct. Notice of the motion  
2 and supporting papers shall be served on all other parties to the  
3 action at least 75 days before the time appointed for hearing.  
4 However, if the notice is served by mail, the required 75-day  
5 period of notice shall be increased by five days if the place of  
6 address is within the State of California, 10 days if the place of  
7 address is outside the State of California but within the United  
8 States, and 20 days if the place of address is outside the United  
9 States, and if the notice is served by facsimile transmission,  
10 Express Mail, or another method of delivery providing for  
11 overnight delivery, the required 75-day period of notice shall be  
12 increased by two court days. The motion shall be heard no later  
13 than 30 days before the date of trial, unless the court for good  
14 cause orders otherwise. The filing of the motion shall not extend  
15 the time within which a party must otherwise file a responsive  
16 pleading.

17 (b) (1) The motion shall be supported by affidavits,  
18 declarations, admissions, answers to interrogatories, depositions,  
19 and matters of which judicial notice shall or may be taken. The  
20 supporting papers shall include a separate statement setting forth  
21 plainly and concisely all material facts ~~which~~ *that* the moving  
22 party contends are undisputed. Each of the material facts stated  
23 shall be followed by a reference to the supporting evidence. The  
24 failure to comply with this requirement of a separate statement  
25 may in the court's discretion constitute a sufficient ground for  
26 denial of the motion.

27 (2) ~~Any~~ An opposition to the motion shall be served and filed  
28 not less than 14 days preceding the noticed or continued date of  
29 hearing, unless the court for good cause orders otherwise. The  
30 opposition, where appropriate, shall consist of affidavits,  
31 declarations, admissions, answers to interrogatories, depositions,  
32 and matters of which judicial notice shall or may be taken.

33 (3) The opposition papers shall include a separate statement  
34 that responds to each of the material facts contended by the  
35 moving party to be undisputed, indicating whether the opposing  
36 party agrees or disagrees that those facts are undisputed. The  
37 statement also shall set forth plainly and concisely any other  
38 material facts that the opposing party contends are disputed. Each  
39 material fact contended by the opposing party to be disputed  
40 shall be followed by a reference to the supporting evidence.

1 Failure to comply with this requirement of a separate statement  
2 may constitute a sufficient ground, in the court's discretion, for  
3 granting the motion.

4 (4) ~~Any~~A reply to the opposition shall be served and filed by  
5 the moving party not less than five days preceding the noticed or  
6 continued date of hearing, unless the court for good cause orders  
7 otherwise.

8 (5) Evidentiary objections not made at the hearing shall be  
9 deemed waived.

10 (6) Except for subdivision (c) of Section 1005 relating to the  
11 method of service of opposition and reply papers, Sections 1005  
12 and 1013, extending the time within which a right may be  
13 exercised or an act may be done, do not apply to this section.

14 (7) ~~Any~~An incorporation by reference of matter in the court's  
15 file shall set forth with specificity the exact matter to which  
16 reference is being made and shall not incorporate the entire file.

17 (c) The motion for summary judgment shall be granted if all  
18 the papers submitted show that there is no triable issue as to ~~any~~  
19 a material fact and that the moving party is entitled to a judgment  
20 as a matter of law. In determining whether the papers show that  
21 there is no triable issue as to ~~any~~ a material fact the court shall  
22 consider all of the evidence set forth in the papers, except that to  
23 which objections have been made and sustained by the court, and  
24 all inferences reasonably deducible from the evidence, except  
25 summary judgment may not be granted by the court based on  
26 inferences reasonably deducible from the evidence, if  
27 contradicted by other inferences or evidence, ~~which~~ that raise a  
28 triable issue as to ~~any~~ a material fact.

29 (d) Supporting and opposing affidavits or declarations shall be  
30 made by ~~any~~ a person on personal knowledge, shall set forth  
31 admissible evidence, and shall show affirmatively that the affiant  
32 is competent to testify to the matters stated in the affidavits or  
33 declarations. ~~Any objections~~ An *objection* based on the failure to  
34 comply with the requirements of this subdivision shall be made  
35 at the hearing or shall be deemed waived.

36 (e) If a party is otherwise entitled to a summary judgment  
37 pursuant to this section, summary judgment may not be denied  
38 on grounds of credibility or for want of cross-examination of  
39 witnesses furnishing affidavits or declarations in support of the  
40 summary judgment, except that summary judgment may be

1 denied in the discretion of the court, ~~where if~~ the only proof of a  
2 material fact offered in support of the summary judgment is an  
3 affidavit or declaration made by an individual who was the sole  
4 witness to that fact; or ~~where if~~ a material fact is an individual's  
5 state of mind, or lack thereof, and that fact is sought to be  
6 established solely by the individual's affirmation thereof.

7 (f) (1) A party may move for summary adjudication as to one  
8 or more causes of action within an action, one or more  
9 affirmative defenses, one or more claims for damages, or one or  
10 more issues of duty, if that party contends that the cause of action  
11 has no merit or that there is no affirmative defense thereto, or that  
12 there is no merit to an affirmative defense as to any cause of  
13 action, or both, or that there is no merit to a claim for damages,  
14 as specified in Section 3294 of the Civil Code, or that one or  
15 more defendants either owed or did not owe a duty to the  
16 plaintiff or plaintiffs. A motion for summary adjudication shall  
17 be granted only if it completely disposes of a cause of action, an  
18 affirmative defense, a claim for damages, or an issue of duty.

19 (2) A motion for summary adjudication may be made by itself  
20 or as an alternative to a motion for summary judgment and shall  
21 proceed in all procedural respects as a motion for summary  
22 judgment. However, a party may not move for summary  
23 judgment based on issues asserted in a prior motion for summary  
24 adjudication and denied by the court, unless that party establishes  
25 to the satisfaction of the court, newly discovered facts or  
26 circumstances or a change of law supporting the issues reasserted  
27 in the summary judgment motion.

28 (g) Upon the denial of a motion for summary judgment, on the  
29 ground that there is a triable issue as to one or more material  
30 facts, the court shall, by written or oral order, specify one or  
31 more material facts raised by the motion ~~as to which~~ that the  
32 court has determined there exists a triable controversy. This  
33 determination shall specifically refer to the evidence proffered in  
34 support of and in opposition to the motion ~~which~~ that indicates  
35 that a triable controversy exists. Upon the grant of a motion for  
36 summary judgment, on the ground that there is no triable issue of  
37 material fact, the court shall, by written or oral order, specify the  
38 reasons for its determination. The order shall specifically refer to  
39 the evidence proffered in support of, and if applicable in  
40 opposition to, the motion ~~which~~ that indicates that no triable

1 issue exists. The court shall also state its reasons for any other  
2 determination. The court shall record its determination by court  
3 reporter or written order.

4 (h) If it appears from the affidavits submitted in opposition to  
5 a motion for summary judgment or summary adjudication or both  
6 that facts essential to justify opposition may exist but cannot, for  
7 reasons stated, then be presented, the court shall deny the motion,  
8 or order a continuance to permit affidavits to be obtained or  
9 discovery to be had or may make any other order as may be just.  
10 The application to continue the motion to obtain necessary  
11 discovery may also be made by ex parte motion at any time on or  
12 before the date the opposition response to the motion is due.

13 (i) If, after granting a continuance to allow specified additional  
14 discovery, the court determines that the party seeking summary  
15 judgment has unreasonably failed to allow the discovery to be  
16 conducted, the court shall grant a continuance to permit the  
17 discovery to go forward or deny the motion for summary  
18 judgment or summary adjudication. This section does not affect  
19 or limit the ability of ~~any~~ a party to compel discovery under the  
20 Civil Discovery Act (Title 4 (commencing with Section  
21 2016.010) of Part 4).

22 (j) If the court determines at any time that ~~any of the affidavits~~  
23 ~~are an affidavit is~~ presented in bad faith or solely for purposes of  
24 delay, the court shall order the party presenting the ~~affidavits~~  
25 ~~affidavit~~ to pay the other party the amount of the reasonable  
26 expenses ~~which~~ that the filing of the ~~affidavits~~ ~~affidavit~~ caused  
27 the other party to incur. Sanctions may not be imposed pursuant  
28 to this subdivision, except on notice contained in a party's  
29 papers, or on the court's own noticed motion, and after an  
30 opportunity to be heard.

31 (k) ~~Except when~~ *Unless* a separate judgment may properly be  
32 awarded in the action, no final judgment may be entered on a  
33 motion for summary judgment prior to the termination of the  
34 action, but the final judgment shall, in addition to any matters  
35 determined in the action, award judgment as established by the  
36 summary proceeding herein provided for.

37 (l) In actions ~~which~~ that arise out of an injury to the person or  
38 to property, if a motion for summary judgment was granted on  
39 the basis that the defendant was without fault, no other defendant  
40 during trial, over plaintiff's objection, may attempt to attribute

1 fault to or comment on the absence or involvement of the  
2 defendant who was granted the motion.

3 (m) (1) A summary judgment entered under this section is an  
4 appealable judgment as in other cases. Upon entry of ~~any~~ *an*  
5 order pursuant to this section, except the entry of summary  
6 judgment, a party may, within 20 days after service upon him or  
7 her of a written notice of entry of the order, petition an  
8 appropriate reviewing court for a peremptory writ. If the notice is  
9 served by mail, the initial period within which to file the petition  
10 shall be increased by five days if the place of address is within  
11 the State of California, 10 days if the place of address is outside  
12 the State of California but within the United States, and 20 days  
13 if the place of address is outside the United States. If the notice is  
14 served by facsimile transmission, Express Mail, or another  
15 method of delivery providing for overnight delivery, the initial  
16 period within which to file the petition shall be increased by two  
17 court days. The superior court may, for good cause, and prior to  
18 the expiration of the initial period, extend the time for one  
19 additional period not to exceed 10 days.

20 (2) Before a reviewing court affirms an order granting  
21 summary judgment or summary adjudication on a ground not  
22 relied upon by the trial court, the reviewing court shall afford the  
23 parties an opportunity to present their views on the issue by  
24 submitting supplemental briefs. The supplemental briefing may  
25 include an argument that additional evidence relating to that  
26 ground exists, but that the party has not had an adequate  
27 opportunity to present the evidence or to conduct discovery on  
28 the issue. The court may reverse or remand based upon the  
29 supplemental briefing to allow the parties to present additional  
30 evidence or to conduct discovery on the issue. If the court fails to  
31 allow supplemental briefing, a rehearing shall be ordered upon  
32 timely petition of ~~any~~ *a* party.

33 (n) (1) If a motion for summary adjudication is granted, at the  
34 trial of the action, the cause or causes of action within the action,  
35 affirmative defense or defenses, claim for damages, or issue or  
36 issues of duty as to the motion ~~which~~ *that* has been granted shall  
37 be deemed to be established and the action shall proceed as to the  
38 cause or causes of action, affirmative defense or defenses, claim  
39 for damages, or issue or issues of duty remaining.

1 (2) In the trial of the action, the fact that a motion for summary  
2 adjudication is granted as to one or more causes of action,  
3 affirmative defenses, claims for damages, or issues of duty within  
4 the action shall not operate to bar ~~any~~ a cause of action,  
5 affirmative defense, claim for damages, or issue of duty as to  
6 which summary adjudication was either not sought or denied.

7 (3) In the trial of an action, neither a party, nor a witness, nor  
8 the court shall comment upon the grant or denial of a motion for  
9 summary adjudication to a jury.

10 (o) A cause of action has no merit if either of the following  
11 exists:

12 (1) One or more of the elements of the cause of action cannot  
13 be separately established, even if that element is separately  
14 pleaded.

15 (2) A defendant establishes an affirmative defense to that  
16 cause of action.

17 (p) For purposes of motions for summary judgment and  
18 summary adjudication:

19 (1) A plaintiff or cross-complainant has met his or her burden  
20 of showing that there is no defense to a cause of action if that  
21 party has proved each element of the cause of action entitling the  
22 party to judgment on that cause of action. Once the plaintiff or  
23 cross-complainant has met that burden, the burden shifts to the  
24 defendant or cross-defendant to show that a triable issue of one  
25 or more material facts exists as to that cause of action or a  
26 defense thereto. The defendant or cross-defendant may not rely  
27 upon the mere allegations or denials of its pleadings to show that  
28 a triable issue of material fact exists but, instead, shall set forth  
29 the specific facts showing that a triable issue of material fact  
30 exists as to that cause of action or a defense thereto.

31 (2) A defendant or cross-defendant has met his or her burden  
32 of showing that a cause of action has no merit if that party has  
33 shown that one or more elements of the cause of action, even if  
34 not separately pleaded, cannot be established, or that there is a  
35 complete defense to that cause of action. Once the defendant or  
36 cross-defendant has met that burden, the burden shifts to the  
37 plaintiff or cross-complainant to show that a triable issue of one  
38 or more material facts exists as to that cause of action or a  
39 defense thereto. The plaintiff or cross-complainant may not rely  
40 upon the mere allegations or denials of its pleadings to show that

1 a triable issue of material fact exists but, instead, shall set forth  
2 the specific facts showing that a triable issue of material fact  
3 exists as to that cause of action or a defense thereto.

4 (q) This section does not extend the period for trial provided  
5 by Section 1170.5.

6 (r) Subdivisions (a) and (b) do not apply to actions brought  
7 pursuant to Chapter 4 (commencing with Section 1159) of Title 3  
8 of Part 3.

9 (s) For the purposes of this section, a change in law does not  
10 include a later enacted statute without retroactive application.